

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>89-11145</u>
CAREY JOHNSON	)	
P. O. Box 11385	)	
Martinez, Georgia 30907	)	FILED
SS# 250-50-5240	)	at 10 O'clock & 08 min. A.M.
	)	Date: 1-26-90
Debtor	)	

**ORDER**

This Chapter 13 proceeding came before the court for confirmation. General Motors Acceptance Corporation (hereinafter "GMAC") objects to confirmation contending that the debtor's proposed plan fails to meet the confirmation criteria of "good faith" under 11 U.S.C. §1325(a)(3).<sup>1</sup>

The debtor, Carey Johnson, proposes a composition Chapter 13 plan paying Three Hundred Nineteen and No/100 (\$319.00) Dollars per month to the Chapter 13 trustee over a period of sixty (60) months to pay sixty percent (60%) of allowed secured claims with the balance of payments distributed to unsecured creditors pro

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<sup>1</sup>GMAC also has objected to confirmation on "good faith" grounds in the debtor's spouse's companion case: In re: Ann Marks Johnson, Chapter 13 Case No. 89-11144. See, order entered this date in the companion case.

rata. The balance of secured claims are to be paid under the debtor's

estranged spouse's companion Chapter 13 case. See, footnote 1, supra. From the evidence presented at the confirmation hearing, this court makes the following findings of fact and conclusions of law.

This is not the debtor's first bankruptcy proceeding. On July 20, 1987, the debtor herein under the name Carey T. Johnson and under social security No. 256-50-5042 and Ann Marks Johnson under social security No. 256-50-3184 brought their joint petition as husband and wife for relief under Chapter 7 of Title 11, United States Code. See, In re: Cary T. Johnson and Ann Marks Johnson, Chpt. 7 Case No. 87-10776 (Bankr. S.D. Ga., 1987). Discharge was entered December 21, 1987. In August, 1988, the debtor under the name Carey P. Johnson applied to Johnson Motor Company, Augusta, Georgia to purchase a 1988 Oldsmobile automobile with the debtor using social security No. 265-05-2065. The application was approved based upon the information submitted by the debtor and his spouse. The debtor and spouse used the manufacturer's rebate as their down payment, financed the balance with GMAC and subsequently failed to make a single payment on the obligation. The motor vehicle was eventually repossessed by self-help without objection. GMAC has filed an unsecured claim in this case for

Six Thousand Nine Hundred Seventy-Five and 49/100 (\$6,975.49) Dollars. On August 3, 1989, the debtor filed this Chapter 13 proceeding under social security No. 256-50-5240.

A review of the other allowed and unobjected to claims filed in this case reveals: On January 9, 1989 the debtor entered into a credit transaction with NCNB National Bank Atlanta, Georgia/Kay Jewelers, Inc. under the name Carey P. Johnson and social security number 265-05-2048. On December 17, 1988, the debtor executed a loan renewal note with Bank of Columbia County using the name Carey P. Johnson and social security number 256-50-5140. Doctors & Merchants Credit Bureau, Inc. has filed various proofs of claim listing the debtor as

1. Carey T. Johnson, social security number 256-50-5240 with claimant Radiology & Imaging and Sarah Clark, M.D.;
2. Corey Johnson with claimant as C.C. Smith, M.D.;
3. Cory Johnston with claimant as Georgia Power Co . ;
4. C.T. Johnson, social security number 256-50-5042, with claimant as Terrance P. Leiden & Assoc. P.C.;
5. Cary Johnson, social security number 256-50-5420, with claimant as Augusta Radiology Assoc. P.C.; and
6. Cary P. Johnson with claimant as Blanchard and Calhoun Real Estate.

Although a comprehensive definition of good faith is not practical, broadly speaking, the basic inquiry should be whether under the circumstances of the case there has been an abuse of the

provisions, purpose and spirit of Chapter 13 in the proposed plan. Kitchens v. Georgia Railroad Bank & Trust Co., 702 F.2d 885 (11th Cir. 1983). As previously noted by this court in other cases, the Kitchens decision sets out a non-exhaustive list of thirteen (13) factors to be considered in a good faith analysis:

1. The amount of the debtor's income from all sources;
2. The living expenses of the debtor and his dependents;
3. The amount of attorneys fees;
4. The probable or expected duration of the debtor's' Chapter 13
5. The motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13;
6. The debtor's degree of effort;
7. The debtor's ability to earn and the likelihood of fluctuation in his earnings;
8. Special circumstances such as inordinate medical expenses;
9. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessor;
10. The circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealing with his creditors;
1. The burden which the plan's administration would place upon the trustee;
12. The substantiality of repayments; and
13. The potential nondischargeability of debt in a Chapter 7 proceeding.

Kitchens v. Georgia Railroad Bank & Trust Company, 702 F.2d 885, 888 (11th Cir. 1983).

The application of the following Kitchens criteria to the facts of this case reveal that this plan fails to meet the confirmation criteria of good faith.

1. The motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13.

In 1987, this debtor using social security No. 256-50-5042 sought

and obtained a discharge under Chapter 7 of the Bankruptcy Code. Within eight months of obtaining the discharge, this debtor using a different social security number contracted with GMAC to finance the purchase of an automobile and never made a payment on the contract. Subsequent to the repossession of this automobile, the debtor once again sought protection of this court using yet a

different social security number. Now under Chapter 13 of the Bankruptcy Code, this debtor proposes to pay sixty percent (60%) of his secured debt, the balance of which is to be paid by the debtor's spouse in her separate Chapter 13 proceeding, with the balance of payments to be distributed pro-rata to the unsecured creditors. Since his discharge in the previous case, the debtor using various combinations of his name and social security numbers has incurred numerous debts. While some variations in the debtor's social security number could be attributed to clerical error, the frequency of the variations established a pattern of an intent to deceive. By use of slight variations of his name and different social security numbers, the debtor attempted to hide his past credit history from his creditors. Beyond the statement of the debtor that the social security number now used is in fact his correct number, this court has no way of knowing which, if any, of the many used social security numbers are in fact correct.

From this pattern of deception it is apparent that the debtor's goal in seeking relief under Chapter 13 is not to put forth a plan for repayment of his debts to the extent possible and financial rehabilitation, but simply the avoidance of debt.

2. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessor.

This is the second bankruptcy proceeding brought by this debtor in two (2) years. While that fact alone is not indicative of a bad faith filing, that fact in conjunction with the use of a different

social security number by the debtor in each filing evidences a lack of commitment to the spirit and purpose of Chapter 13, rehabilitation through repayment and evidences an attempted manipulation of the bankruptcy process.

3. The circumstances under which the debtor has contacted his debts and his demonstrated bona fides, or lack of same, in dealing with his creditors.

Shortly after obtaining his discharge in the previous Chapter 7 proceeding this debtor through the use of different social security numbers entered into numerous credit transactions, including the purchase of a 1988 Oldsmobile for which he never made a payment. The debtor by using variations of his name and various social security numbers with different creditors attempted to hide his credit history from his creditors, which clearly evidences bad faith in his dealings with them.

4. The potential nondischargeability of debt in a Chapter 7 proceeding.

The provisions of 11 U.S.C. §727(a)(8) prevent the granting of a discharge under Chapter 7 of Title 11 United States Code to this debtor for a period of six (6) years from July 20, 1987. None of these debts of the debtor are dischargeable in a Chapter 7 proceeding.

While one of these factors alone may not be a sufficient basis for finding that the debtor lacks the requisite "good faith", by combining these factors, the evidence is clearly sufficient to conclude that the debtor's plan is not proposed in good faith. Confirmation must, therefore, be denied. The debtor, through his dealings with his creditors and by his misrepresentations to this court on his petition and schedules as to his correct social security number in this and/or the previous Chapter 7 proceeding has failed to demonstrate a commitment to the spirit and purpose of Chapter 13, rehabilitation and repayment. "[W]henEVER a Chapter 13 petition appears to be tainted with a questionable purpose, it is incumbent upon the bankruptcy courts to examine and question the debtor's motives. If the court discovers unmistakable manifestations of bad faith . . . confirmation must be denied." In re: Waldron, 785 F.2d 936, 941 (11th Cir. 1986). In addition, when bad faith is evident, and the debtor lacks a commitment to the rehabilitative intent of Chapter 13, and it is

apparent to the court that the debtor's filing is an abuse of the bankruptcy process, dismissal of the debtor's case is appropriate. See, 11 U.S.C. §105.

It is therefore ORDERED that confirmation of the debtor's plan is denied and the Chapter 13 case is dismissed.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 26th day of January, 1990.